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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Case No. 3:10-cv-03561-WHA

13 Plaintiff,

Honorable Judge William Alsup

14 v.

**JOINT ESI AGREEMENT**

15 GOOGLE INC.

16 Defendant.

1 Pursuant to ¶ 4 of the Case Management Order (Dkt. 56) entered in this case on  
 2 November 18, 2010, the parties jointly submit that the provisions of the following ESI agreement  
 3 shall apply:

- 4 1. Search Terms. The parties will discharge their production obligations with respect to all  
 5 custodian documents (email and documents on personal computers and in personal  
 6 directory files) using Search Terms to identify documents for production.
  - 7 a. Search Terms proposed by a party requesting documents will be included by the  
 8 producing party unless there is a reasonable basis for objecting, and the parties  
 9 will endeavor in good faith to agree upon Search Terms that minimize the  
 10 likelihood of non-responsive results.
  - 11 b. Search terms need not be identical for both parties.
  - 12 c. Where good cause exists for requesting a different review for a particular  
 13 custodian or data type, the parties will cooperate in good faith to reach a  
 14 reasonable, agreed approach. For example:
    - 15 i. A single set of search terms should be applied to all custodians for each  
 16 party unless a reasonable basis exists to apply a different set of terms to a  
 17 logically distinguishable subset of custodians.
    - 18 ii. The temporal scope of searches applied to a custodian may be limited if a  
 19 reasonable basis exists to do so.
  - 20 d. The party seeking to limit the scope of search, whether by date, a limited set of  
 21 search terms, or otherwise, will include in its custodian log (see Paragraph 6,  
 22 below) an identification of any such limitations and explanation of why and how  
 23 such limitations were applied.
- 24 2. Scope of Production for Custodian Documents. After applying agreed-upon Search  
 25 Terms to custodian documents, each party will produce the relevant, non-privileged  
 26 documents. For each custodian, the producing party must identify the percentage of  
 27 documents captured by the search terms but withheld as not relevant.

1       3. Privileged Documents. Parties may apply an automated privilege screen to custodian  
 2       documents, and the parties agree to the following procedure in recognition of the  
 3       potential massive burden of producing a log corresponding to the captured documents,  
 4       which would contain many documents that are either not privileged, or not relevant:  
 5           a. At the time of production of documents for a particular custodian, the producing  
 6       party will provide the number of documents captured by the privilege screen and  
 7       an estimate of the number of documents that are relevant and will be logged,  
 8       along with an estimated time for completion of the logging of those documents.  
 9           b. The parties agree that privilege logs shall be in a native spreadsheet file format  
 10       and identify all responsive, privileged documents and be in compliance with the  
 11       *Supplemental Order to Order Setting Initial Case Management Conference in*  
 12       *Civil Cases before Judge William Alsup* (Dkt. 26) (“*Supplemental Order*”), by  
 13       providing the following for each entry:  
 14               i. A unique identifying privilege number;  
 15               ii. The date of the communication, or if not known, an approximate date  
 16       wherever possible;  
 17               iii. The location of the communication (e.g., a specific custodian’s emails);  
 18               iv. All persons in the From, To, CC and BCC fields of any privileged emails,  
 19       and all persons identified as authoring, sending or receiving any privileged  
 20       non-email documents;  
 21               v. The asserted privilege;  
 22               vi. The subject matter of the communication which justifies the basis of the  
 23       asserted privilege;  
 24               vii. The steps taken to ensure the confidentiality of the communication (such  
 25       as the existence of “confidential” or “privileged” labels on the material)  
 26       and a representation in good faith that the material does not appear to have  
 27       been disseminated to unauthorized persons; and  
 28               viii. Whether the document contains any attachments.



- 1 a. Group IV black and white TIFF images for email and word documents; and
- 2 b. color JPEG images for PDF, presentation (*e.g.*, PowerPoint), and other graphic
- 3 files.

4 Electronic documents shall be provided with any available extractable text at the  
5 document level (*i.e.*, not per page), and OCR data shall be provided – if generated by the  
6 producing party – for paper documents, redacted documents, or other electronic  
7 documents that do not contain extractable text (*e.g.*, PDF files without extractable text).

8 10. Production in Native Format. Certain documents shall be produced in native format:

- 9 a. All Spreadsheet documents (*e.g.*, excel, CSV, etc.) should be produced in native  
10 format with a spacer image sheet indicating as such.
- 11 b. Sound, video and other files not practical for the TIFF or JPEG formats should be  
12 produced in native format with a spacer sheet image indicating as such.

13 The original filenames of such documents may be replaced with the same production  
14 (bates) number and designation (if any) shown on the spacer image sheet for easy  
15 reference.

16 11. Metadata. Where available, the following metadata shall be included with the produced  
17 custodian documents:

- 18 a. *For Email:*
  - 19 i. Custodian
  - 20 ii. Original Location (*e.g.*, complete filepath for Inbox, Sent Items, etc)
  - 21 iii. From
  - 22 iv. To
  - 23 v. CC
  - 24 vi. BCC
  - 25 vii. Subject
  - 26 viii. Sent Date
  - 27 ix. Sent Time
  - 28 x. Attachment Range\Family Group (*e.g.*, BegAttach, EndAttach)

1                   xi. Message ID

2                   b. *For electronic documents other than email:*

3                   i. Custodian

4                   ii. Original Location (e.g., C:\Documents and Settings\My Documents)

5                   iii. File Name

6                   iv. Author

7                   v. Title

8                   vi. Comments

9                   vii. Company

10                   viii. Create Date

11                   ix. Modify Date

12                   x. File Size

13                   xi. MD5HASH

14                   c. *For paper documents:*

15                   i. Custodian

16                   ii. Location

17                   12. Source Code Repositories. Both parties expect to make available for inspection in this  
18                   action documents and materials designated “HIGHLY CONFIDENTIAL – SOURCE  
19                   CODE” pursuant to the agreed provisions of the protective order that the parties have  
20                   jointly proposed.

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18  
19 Dated: December 17, 2010

20 By: /s/ Richard S. Ballinger  
Richard S. Ballinger

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21 By: /s/ Scott T. Weingaertner  
22 Scott T. Weingaertner

23 Dated: December 17, 2010

24 Attorneys for Defendant  
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26 **Attestation of Concurrence**

27 I, Richard S. Ballinger, as the ECF user and filer of this document, attest that concurrence  
28 in the filing of this document has been obtained from each of the above signatories.

29 Dated: December 17, 2010

30 By: /s/ Richard S. Ballinger  
31 Richard S. Ballinger